

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

EASTMAN KODAK COMPANY,

Plaintiff,

v.

ALTEK CORPORATION

Defendant.

Civil Action No. 12-cv-246-DLC

**PLAINTIFF EASTMAN KODAK COMPANY'S MEMORANDUM OF LAW IN
SUPPORT OF MOTION FOR THE ISSUANCE OF LETTERS ROGATORY**

Plaintiff Eastman Kodak Company ("Kodak") respectfully submits this Memorandum of Law in Support of its Motion for the Issuance of Letters Rogatory. In support of its request for Letters Rogatory, Kodak states as follows:

1. Kodak filed its Complaint in this action against Defendant Altek Corporation ("Altek") on January 12, 2012. (Dkt. No. 1.)
2. Altek is a Taiwanese corporation. Taiwan is not a signatory to the Hague Service Convention. Accordingly, Kodak's Complaint cannot be served on Altek through the Hague Convention.
3. Under the Federal Rules of Civil Procedure, where the Hague Convention does not apply, service may be completed on a foreign defendant by any of the methods listed in Rule 4(f)(2), including by mail through the Clerk of Court, if such service is not prohibited in the foreign jurisdiction. Kodak understands that service by mail is not prohibited in Taiwan. Accordingly, on January 31, 2012, Kodak requested that the Clerk of Court serve Altek with the Complaint and Summons by mail in Taiwan to satisfy the service requirements of the Federal Rules of Civil Procedure. (See Dkt. No. 3.)

4. On February 3, 2011 Altek was served with copies of the Complaint and Summons to Altek. (*See* Clerk's February 14, 2012 Docket Entry.)

5. Nonetheless, Kodak is concerned that Altek may argue that although service by mail is not prohibited in Taiwan, it is not sufficient under Taiwanese law and that, without some other means of service, a Taiwanese court is not required to recognize a judgment that Kodak obtains in this Court.

6. Taiwanese courts have recognized Letters Rogatory as a sufficient means of service by a foreign plaintiff.

7. This Court has authority to issue Letters Rogatory pursuant to 28 U.S.C. § 1781 and Fed. R. Civ. P. 4(f)(2).

8. Kodak respectfully requests that the Court issue the attached Letters Rogatory to ensure that Altek cannot argue that Kodak's service of the Complaint is insufficient under Taiwanese law. The Letters Rogatory are attached to the Declaration of Robert J. Gunther, Jr., filed concurrently herewith.

9. If the Court grants Kodak's request, Kodak's counsel will transmit the signed Letters Rogatory to the Department of State, Office of Overseas Citizens Service, along with copies and translations of the Complaint. The Department of State will send the Letters Rogatory and Complaint to the American Institute in Taiwan, located in Washington D.C. From there, the documents will be transmitted to the Taiwanese Economic and Cultural Office in Washington DC, the Taiwanese Foreign Ministry in Taipei, and then to the appropriate Judicial Authority in Taiwan (in this case, the Taiwan Taipei District Court) to complete service on Altek. The proof of service will be returned to this Court through the same channels.

Respectfully submitted,

EASTMAN KODAK COMPANY

By its attorneys,

Dated: New York, New York
February 15, 2012

/s/ Robert J. Gunther, Jr.

Robert J. Gunther, Jr.
WILMER CUTLER PICKERING
HALE & DORR, LLP
399 Park Avenue
New York, New York 10022
Tel: (212) 230-8800
Fax: (212) 230-8888
robert.gunther@wilmerhale.com

Of Counsel:

Michael J. Summersgill
Jordan L. Hirsch
WILMER CUTLER PICKERING
HALE & DORR, LLP
60 State Street
Boston, Massachusetts 02109
Tel: (617) 526-6000
Fax: (617) 526-5000

CERTIFICATE OF SERVICE

I certify that on February 15, 2012, a copy of the foregoing document was filed electronically through the Court's ECF system. Notice of this filing will be sent to counsel for Altek by First Class Mail.

/s/ Robert J. Gunther, Jr.

Robert J. Gunther, Jr.
WILMER CUTLER PICKERING
HALE & DORR, LLP
399 Park Avenue
New York, New York 10022
Tel: (212) 230-8800
Fax: (212) 230-8888
robert.gunther@wilmerhale.com